

## **REMARKS**

### **Summary of the Office Action**

Claims 1, 6, 9, 20, 21 and 52-64 are currently pending in this application. Claims 20, 21, and 60-64 were withdrawn by the Examiner. Claims 1, 6, 9, 54, 55 and 57-59 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,033,841 to Maddux (referred to herein after, as "Maddux"). Claims 1, 6, 9, 52-54, and 57 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,263,528 to Husler (referred to herein after, as "Husler"). Claims 55 and 56 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Maddux in view of U.S. Patent No. 6,295,676 to Warner (referred to herein after, as "Warner") or U.S. Patent No. 4,429,427 to Sklar (referred to herein after, as "Sklar"). Claims 55 and 56 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over Husler in view of Warner or Sklar.

### **Summary of the Applicant's Response**

Claims 1, 6, 9 and 52-69 are previously presented. No new matter is added. Applicant hereby traverses the rejection and respectfully requests reconsideration in view of the remarks set forth below.

### **Response to Rejections under 35 U.S.C. §102(b)**

Independent claim 1 is directed to an adjustable bed mattress having a substantially rectangular sleeping surface and a pivoting member attached to an exterior portion of a major surface of the mattress. The pivoting member is configured as a tubular sleeve that extends outwardly from the major surface and is adapted to receive an attachment bar for attachment to an adjustable bed frame.

Maddux relates to spring mattresses for hospital adjustable beds composed of sections of spring assemblies that are hingedly connected to each other so as to accommodate for reclining the sections to different angular positions relative to one another. Maddux fails to disclose a pivoting member that is attached to an exterior portion of major surface of a mattress as recited in the claims.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Office Action, citing Figures 1, 3 and 4-6 in Maddux, states that the pivoting member is webbing 15. The Action alleges that webbing 15 is attached to an exterior surface of the mattress. However, Figures 1-3 in Maddux show the exterior surface of the mattress to be surface 17. The webbing 15 is not attached to surface 17. Instead, as shown in Figure 4, the webbing 15 is attached to an internal edging helical 14. In contrast, claim 1 explicitly recites that the pivoting member is attached to an exterior portion of the mattress. Therefore, webbing 15 is not the claimed pivoting member. Accordingly, Maddux does not disclose each element as set forth in the claim.

Moreover, Maddux fails to disclose the pivoting member as extending outwardly from the major surface. The Office Action, referencing Figure 4, alleges that Maddux discloses this limitation. Applicant points out that Figure 4 in Maddux is a "plan view of a portion of the mattress." (Col. 1, Lines 28-31). Being a plan view, Figure 4 does not show cross-sectional detail and therefore is insufficient in determining whether webbing 15 extends in an outwardly direction. However, Figure 5 shows a "[cross]-section on line 5 – 5 of Figure 4." (Col. 1, Lines 31-34). In Figure 5, the webbing 15 loops into the mattress spring structure, and not outwardly therefrom. Therefore, the webbing 15 in Maddux is not the claimed pivoting member because the webbing 15 does not extend outwardly from any major surface. Accordingly, Maddux does not describe all the elements of the claims as is required by MPEP §2131 to make a proper rejection under 35 U.S.C. §102.

Husler fails to disclose a "pivoting member" as recited in the claims. "Claims are to be given their broadest reasonable interpretation consistent with the specification." *In re Van Geuns*, 988 F.2d 1181 (Fed. Cir. 1993). "However, this rule does not relieve the PTO of its essential task of examining the entire patent disclosure to discern the meaning of claim words and phrases." *Voice Tech. Group Inc. v. VMC Sys. Inc.*, 164 F.3d 605 (Fed. Cir. 1999). The claims recite a "pivoting member . . . configured as a tubular sleeve." The Office Action alleges that Husler's beam sheath 51 is the pivoting member. Applicant respectfully disagrees. The claimed invention is directed to an

adjustable bed mattress. The specification describes the pivoting member as being not only a tubular sleeve, but one that is for pivoting. In particular, the pivoting member provides a pivot point about which one portion of the mattress can pivot in relation to another portion of the mattress. Husler's beam sheath 51 is used as a support for a leaning device, not for pivoting. Therefore, Husler's beam sheath 51 is not a pivoting member as interpreted broadly and consistent with the specification.

Even though Husler's beam sheaths 51 are tubular in shape, they do not inherently possess the function of a pivoting member of the claims. "There is no presumption that, if a prior art reference discloses the same structure as claimed, . . . the resulting property is inherently present." *Crown Oper. Int'l Inc. v. Solutia Inc.*, 289 F.3d 1346 (Fed. Cir. 2002). "To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *In re Robertson*, 169 F.3d 743 (Fed. Cir. 1999). Husler's beam sheath 51 are "tunnel-like" and "fixed to a lath grid cloth 1." (Col. 3, Lines 35-38). The beam sheaths 51 are configured to allow longitudinal beams 5 to be positioned therein. (Col. 3, Lines 40-43). Although, Husler's beam sheaths 51 are somewhat tubular, they are not described as pivoting members, or as configured to function as a pivoting member, or even as adapted to receive an attachment bar for attachment to an adjustable bed frame. The Office Action does not provide any extrinsic evidence to make clear that the beam sheaths 51 are necessarily used as pivoting members. Moreover, a person of ordinary skill in the art would not recognize a pivoting member in Husler at least because the beam sheaths 51 extend along a longitudinal direction near the edges of the leaning device. Husler does not disclose any pivoting functionality. Simply because the beam sheath 51 has a tubular shape, does not mean that it is a pivoting member as recited in the claims. Therefore Husler does not describe all the elements of the claims as is required by MPEP §2131 to make a proper rejection under 35 U.S.C. §102.

Applicant therefore requests reconsideration and withdrawal of the rejection of claim 1. Claims 6, 9, 52-55 and 57-659 depend from claim 1 and add further limitations thereto. Thus, Applicant requests reconsideration and withdrawal of the rejections of these claims, as well.

**Response to Rejections under 35 U.S.C. §103(a)**

Warner is directed to a mattress construction having a main sleep area with honeycomb nested rows of wire springs, and a perimeter trim formed from pocketed wire springs. Sklar is directed to a spring reinforced seat cushion having a main body panel of foam material and a pair of oppositely disposed seat faces. Warner or Sklar, alone or in combination, do not teach or suggest an adjustable bed mattress having a mattress and pivoting member as recited in independent claim 1.

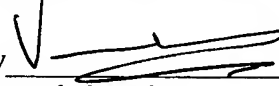
In view of the above remarks, neither Maddux nor Husler nor Warner nor Sklar, alone or in combination, teach or suggest each and every element of independent claim 1. "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Because claims 55 and 56 depends from, and is limited by, claim 1 and adds further limitations thereto, the §103 Rejection of this claim should also be withdrawn.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

We believe that we have appropriately provided for fees due in connection with this submission. However, if there are any other fees due in connection with the filing of this Response, please charge our Deposit Account No. 18-1945, under Order No. SMCY-P01-081 from which the undersigned is authorized to draw.

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Respectfully submitted,

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